

#13  
5/27/91  
H.C.  
GAH  
RECEIVED PATENT

IN THE UNITED STATES PATENT  
AND TRADEMARK OFFICE

MAY 22 1992

GROUP 320

Applicant: David L. FOSNAUGH ) I hereby certify that this  
Serial No.: 07/699,479 ) paper is being deposited  
Filed: 05/13/91 ) with the United States  
For: DIE-SHAPING APPARATUS AND ) Postal Service as First  
PROCESS AND PRODUCT FORMED ) Class Mail in an envelope  
THEREBY ) addressed to: Commissioner  
Group Art Unit: 3204 ) of Patents & Trademarks,  
Examiner: Raymond Woods ) Washington, D.C. 20231, on  
Date: May 21, 1992  
Donald J. Brott  
Registration No. 19,490  
Attorney for Applicant

LETTER

Hon. Commissioner of Patents  
and Trademarks  
Washington, D.C. 20231

Sir:

In an Information Disclosure Statement mailed on March 10, 1992 by applicant, the Examiner was advised of pending litigation involving the subject matter of this application, pursuant to Rule 1.56 and MPEP § 2001.06 (c).

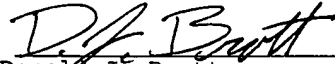
Attached hereto is a copy of a Complaint filed by Franklin Electric Co., Inc., assignee of the present application, and a copy of an Answer of L. H. Carbide Corporation, the

parties in the above litigation. The Answer contains a Counterclaim and Affirmative Defenses.

Respectfully submitted,

MARSHALL, O'TOOLE, GERSTEIN,  
MURRAY & BICKNELL

Date: May 21, 1992

  
Donald J. Brott  
Registration No. 19,490  
Two First National Plaza  
Chicago, Illinois 60603  
Telephone: (312) 346-5750

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
EASTERN DIVISION

RECEIVED <sup>A.C.</sup>  
MAY 22 1992

FRANKLIN ELECTRIC CO., INC., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
L.H. CARBIDE CORPORATION, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No. **GROUP 320**  
  
COMPLAINT  
AND  
JURY DEMAND

COMPLAINT AND JURY DEMAND

Plaintiff, FRANKLIN ELECTRIC CO., INC., for its complaint  
against defendant, L.H. CARBIDE CORPORATION, alleges:

THE PARTIES

1. Plaintiff, Franklin Electric Co., Inc. ("Franklin Electric"), is an Indiana corporation doing business in Indiana and having a place of business at 400 East Spring Street, Bluffton, Indiana.
2. On information and belief, defendant, L.H. Carbide Corporation ("Carbide"), is an Indiana corporation doing business in Indiana and having a place of business at 4420 Clubview Drive, Fort Wayne, Indiana.

FACTUAL BACKGROUND

3. Franklin Electric is in the business of manufacturing electrical motors. The motors are made by joining together metal laminations to form the stator and rotor components of the

motors. The laminations are formed by subjecting planar strips of relatively thin metal to consecutive stamping operations that use metal stamping or cutting dies to form the physical configuration of the laminations.

4. In the past, the process of forming metal laminations from metal strips resulted in a relatively large amount of metal scrap or waste material due to out-of-tolerance dimensional differences between the strips and the dies. This problem has plagued the industry for years.

5. In 1990, David Fosnaugh, an employee of Franklin Electric, addressed that persistent problem and conceived a new apparatus and process for forming motor laminations from metal strips that greatly reduced the amount of scrap or waste material generated during the stamping of the laminations, thereby significantly increasing the efficiency of the metal stamping operations. The new method invented by Mr. Fosnaugh is referred to herein as the "scroll relief" concept.

6. Carbide is in the business of manufacturing and reconditioning dies for use in manufacturing laminations for electrical motors. Carbide has in the past been a supplier of such dies to Franklin Electric.

7. In July of 1990, Mr. Fosnaugh disclosed his scroll relief concept to Delno Abnet, an employee and agent of Carbide, for the purpose of having Carbide recondition one of Franklin Electric's preexisting dies and modify the die to incorporate the scroll relief concept therein.

8. Mr. Fosnaugh's disclosure of the scroll relief concept to Mr. Abnet was made pursuant to an agreement between Mr. Fosnaugh and Mr. Abnet and, therefore, between Franklin Electric and Carbide, that Carbide would not disclose the scroll relief concept to anyone else until such time as Franklin Electric had no further interest in the concept. Furthermore, Mr. Fosnaugh relied on the custom in the trade that concepts or ideas presented to a supplier for the purpose of obtaining custom-made equipment from the supplier would not be disclosed or exploited by the supplier to the detriment of the purchaser of the equipment.

9. The reconditioning of Franklin Electric's die by Carbide was performed pursuant to a written agreement between Franklin Electric and Carbide, a true copy of which is attached hereto as Attachment 1, that Carbide would not use Franklin Electric's dies, tools, patterns or drawings in the production, manufacture or design of any articles for anyone else without the written consent of Franklin Electric. The agreement also provided that Carbide agreed that it would not quote or provide to other parties any articles utilizing Franklin Electric's patterns, specifications, drawings or design. The agreement further provided that Carbide was to keep confidential the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by Franklin Electric.

10. Pursuant to the agreement between Franklin Electric and Carbide, Carbide reconditioned Franklin Electric's die and incorporated the scroll relief concept therein. Franklin Electric used the reconditioned die to manufacture motor laminations and found that the method of making laminations that incorporated the scroll relief concept was superior to the old method, resulting in significantly less scrap or waste material and a correspondingly greater yield of acceptable laminations.

11. On information and belief, Carbide disclosed and/or made available and/or offered Franklin Electric's proprietary information relating to the scroll relief concept to other individuals and companies, including General Electric Co. and Emerson Electric Co., subsequent to the above agreement between Franklin Electric and Carbide, without Franklin Electric's knowledge or consent and in total disregard of and in breach of the agreement. Carbide also offered for sale and sold dies incorporating the scroll relief concept to companies other than Franklin Electric, including General Electric Co. and Emerson Electric Co., competitors of Franklin Electric in the manufacture of electrical motors, in contravention of the agreement between Franklin Electric and Carbide.

COUNT I  
VIOLATIONS OF § 43(A) OF LANHAM ACT

12. This cause of action is for Carbide's violations of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Jurisdiction is founded upon 28 U.S.C. § 1331. Venue is proper under 28 U.S.C.

§ 1391(b).

13. Franklin Electric realleges and incorporates herein each of the allegations contained in paragraphs 1-11 above.

14. Carbide has falsely represented, in connection with its dies and die services, that Carbide was the originator and owner of Franklin Electric's scroll relief concept and that Carbide had or was going to obtain exclusive rights to such concept. Such false designations of origin and false representations of fact were made in advertising literature, a true copy of which is attached hereto as Attachment 2, that falsely states that the scroll relief concept was Carbide's and that patents were pending for the scroll relief concept at a time when no patent application was pending for that concept. Carbide's false statements were made intentionally, wantonly, willfully and with total disregard for the truth of or for the effect of such false statements on the business of Franklin Electric.

15. Franklin Electric has been damaged and will continue to be damaged by Carbide's false designations of origin and false and misleading descriptions and misrepresentations of fact because competitors of Franklin Electric have purchased and will continue to purchase dies from Carbide and manufacture motors in competition with Franklin Electric using Franklin Electric's proprietary information, thus giving Franklin Electric's competitors an unfair and unearned market advantage.

WHEREFORE, Franklin Electric prays for a judgment:

(a) Awarding damages to Franklin Electric in an amount to be determined by the jury under the direction of the Court but not less than \$5,000,000.00;

(b) Awarding a threefold increase in the amount of damages so found;

(c) Awarding Franklin Electric all of Carbide's profits from the sale of equipment resulting from or in any way connected to Carbide's violations of 15 U.S.C. § 1125(a);

(d) Imposing preliminary and permanent injunctive relief:

(1) enjoining Carbide from making any further false designations of origin and false or misleading descriptions or representations of fact with respect to its dies and services related thereto;

(2) ordering Carbide to engage in corrective advertising by informing the industry that the scroll relief concept was originated and is owned by Franklin Electric, not Carbide, and that Carbide has no exclusive rights in the concept nor can it obtain exclusive rights in the concept;

(3) ordering Carbide to personally advise in writing any person or entity that it made a misrepresentation regarding the origination and ownership of the scroll relief concept that such concept was originated by and is owned by Franklin Electric, not Carbide, and that Carbide has no exclusive rights in the concept nor can it obtain exclusive rights in the concept; and



(4) ordering Carbide to deliver up for destruction all labels, signs, prints, packages, wrappers, receptacles and advertisements in the possession of Carbide and all plates, molds, matrices and other means of making the same that embody or in any way are connected to Carbide's violation of 15 U.S.C. § 1125(a);

(e) Awarding Franklin Electric its attorney fees and costs incurred in this action; and

(f) Awarding such other and further relief as this Court deems just and equitable.

COUNT II  
BREACH OF CONTRACT

16. This cause of action is for breach of contract. Jurisdiction is based on the doctrine of pendent jurisdiction. Venue is proper.

17. Franklin Electric realleges and incorporates herein each of the allegations contained in paragraphs 1-15 above.

18. Franklin Electric fully performed all of its obligations under its agreement with Carbide.

19. Carbide breached its agreement with Franklin Electric by disclosing and using Franklin Electric's scroll relief concept and Franklin Electric's confidential information relating thereto.

20. The breach of the agreement by Carbide caused substantial injury to Franklin Electric.

WHEREFORE, Franklin Electric prays for a judgment:

(a) Awarding damages to Franklin Electric in an amount to be determined by the jury but not less than \$5,000,000.00;

(b) Awarding such other and further relief as this Court deems just and equitable.

COUNT III  
MISAPPROPRIATION OF TRADE SECRETS -- IND. CODE §§ 24-2-3

21. This cause of action is for misappropriation of trade secrets in violation of the provisions of Ind. Code §§ 24-2-3-1, et seq. Jurisdiction is based on the doctrine of pendent jurisdiction. Venue is proper.

22. Franklin Electric realleges and incorporates herein each of the allegations contained in paragraphs 1-20 above.

23. Franklin Electric's trade secrets relating to its scroll relief concept have great economic value to Franklin Electric since they allow Franklin Electric to manufacture motor laminations in a very efficient manner, resulting in significant cost savings to Franklin Electric as compared with previous methods of manufacturing motor laminations and conferring a competitive advantage on Franklin Electric over its competitors engaging in conventional methods of manufacturing motor laminations.

24. Franklin Electric's trade secrets relating to its scroll relief concept are not generally known by others and are not readily ascertainable by proper means by others who could obtain economic value from their disclosure or use.

25. Franklin Electric has made reasonable efforts to maintain the secrecy of its trade secrets relating to its scroll relief concept. These efforts have included, inter alia, requiring Carbide to agree not to disclose Franklin Electric's scroll relief concept to others as a condition to Franklin Electric's disclosure of the concept to Carbide and having Carbide prepare drawings relating to Franklin Electric's scroll relief concept on Franklin Electric drawing paper which clearly indicates that all information relating to the scroll relief feature was the proprietary information of Franklin Electric and that it was not to be disclosed to others. Franklin Electric also relied on the custom in the trade referred to in paragraph 8 hereinabove in its dealings with Carbide.

26. Carbide misappropriated Franklin Electric's trade secrets by, inter alia, using them in connection with the design, manufacture, offer for sale and sale of dies to others, without the consent of Franklin Electric, although Carbide knew at the time of such use that the trade secrets were acquired under circumstances giving rise to a duty to limit their use.

27. Carbide also misappropriated Franklin Electric's trade secrets by disclosing them in a patent application Carbide filed in the U.S. Patent and Trademark Office and by wrongly attempting to obtain exclusive use of Franklin Electric's scroll relief concept through the issuance of a patent to Carbide, although Carbide knew at the time it performed such acts that such trade

secrets were acquired under circumstances giving rise to a duty to maintain their secrecy and limit their use.

28. Carbide's unauthorized disclosure and use of Franklin Electric's trade secrets was intentional, wanton, willful, and malicious and in total disregard of the rights of Franklin Electric.

29. As a result of Carbide's misappropriation of Franklin Electric's trade secrets, Franklin Electric has been and will continue to be damaged due to the loss of the competitive advantage of Franklin Electric resulting from its trade secrets relating to its scroll relief concept.

WHEREFORE, Franklin Electric prays for a judgment:

(a) Awarding compensatory damages to Franklin Electric in an amount to be determined by the jury but not less than \$5,000,000.00;

(b) Awarding exemplary damages to Franklin Electric in an amount to be determined by the jury but not less than \$10,000,000.00;

(c) Imposing preliminary and permanent injunctive relief:

(1) enjoining Carbide from making any further unauthorized use or disclosure of Franklin Electric's trade secrets;

(2) compelling Carbide to return to Franklin Electric all documents and things referring or relating in any way to Franklin Electric's trade secrets;

(3) ordering Carbide to advise any person or entity to which it has disclosed Franklin Electric's trade secrets to advise such person or entity that such are the proprietary and trade secret information of Franklin Electric and that they should not be disclosed to others or used in any manner without the prior written consent of Franklin Electric;

(4) ordering Carbide to assign to Franklin Electric the patent application Carbide filed in its attempt to gain exclusive rights to Franklin Electric's scroll relief concept;

(5) enjoining Carbide from making any further attempts to obtain patent protection for Franklin Electric's scroll relief concept; and

(6) enjoining Carbide from offering to sell or selling any dies incorporating the scroll relief concept or modifying or reconditioning any dies to incorporate the scroll relief concept;

(d) Awarding Franklin Electric its attorney fees and costs incurred in this action; and

(e) Awarding such other and further relief as this Court deems just and equitable.

COUNT IV  
UNJUST ENRICHMENT

30. This cause of action is for unjust enrichment. Jurisdiction is based on the doctrine of pendent jurisdiction. Venue is proper.

31. Franklin Electric realleges and incorporates herein each of the allegations contained in paragraphs 1-29 above.

32. As a result of Carbide's unauthorized use of Franklin Electric's scroll relief concept and Franklin Electric's proprietary and confidential information relating thereto, a valuable benefit was conferred upon Carbide at the expense of Franklin Electric.

33. Carbide has been unjustly enriched as a result of the benefit conferred upon it by Franklin Electric and under circumstances in which Franklin Electric should be reimbursed for the amount by which Carbide has been unjustly enriched.

WHEREFORE, Franklin Electric prays for a judgment:

(a) Awarding to Franklin Electric damages in an amount to be determined by the jury but not less than \$5,000,000.00;

(b) Preliminary and permanent injunctive relief:

(1) enjoining Carbide from making any further unauthorized use or disclosure of Franklin Electric's scroll relief concept;

(2) compelling Carbide to return to Franklin Electric all documents and things referring or relating in any way to Franklin Electric's scroll relief concept;

(3) ordering Carbide to advise any person or entity to which it has disclosed Franklin Electric's scroll relief concept to advise such person or entity that such is proprietary to Franklin Electric and that it should not be

disclosed to others or used in any manner without the prior written consent of Franklin Electric;

(4) ordering Carbide to assign to Franklin Electric the patent application Carbide filed in its attempt to gain exclusive rights to Franklin Electric's scroll relief concept;

(5) enjoining Carbide from making any further attempts to obtain patent protection for Franklin Electric's scroll relief concept; and

(6) enjoining Carbide from offering to sell or selling any dies incorporating the scroll relief concept or modifying or reconditioning any dies to incorporate the scroll relief concept;

(c) Awarding Franklin Electric its attorney fees and costs incurred in this action; and

(d) Awarding such other and further relief as this Court deems just and equitable.

COUNT V  
DAMAGES FOR PROPERTY LOST DUE TO CRIMINAL CONVERSION

34. This cause of action seeks damages for property loss caused by criminal acts, pursuant to the provisions of Ind. Code §§ 34-4-30-1, et. seq. Jurisdiction is based on the doctrine of pendent jurisdiction. Venue is proper.

35. Franklin Electric realleges and incorporates herein each of the allegations contained in paragraphs 1-33 above.

36. On information and belief, Carbide committed criminal conversion by knowingly and intentionally exerting unauthorized control over Franklin Electric's property by using Franklin Electric's proprietary and confidential information in order to sell Carbide's dies, by disclosing Franklin Electric's proprietary and confidential information to others, and by attempting to obtain exclusive rights to Franklin Electric's scroll relief concept through Carbide's filing of a patent application for the scroll relief concept.

37. Such use and control of Franklin Electric's personal property was made without Franklin Electric's authorization, knowledge or consent.

WHEREFORE, Franklin Electric prays for a judgment:

(a) Awarding three times the amount of Franklin Electric's compensatory damages for the injury to Franklin Electric caused by Carbide's unlawful conversion of Franklin Electric's confidential information, or punitive damages in the alternative;

(b) Imposing preliminary and permanent injunctive relief:

(1) enjoining Carbide from making any further unauthorized use or disclosure of Franklin Electric's scroll relief concept and any information relating thereto;

(2) compelling Carbide to return to Franklin Electric all documents and things referring or relating in any way to Franklin Electric's scroll relief concept;



(3) ordering Carbide to advise any person or entity to which it has disclosed Franklin Electric's scroll relief concept to advise such person or entity that such is proprietary to Franklin Electric and that it should not be disclosed to others or used in any manner without the prior written consent of Franklin Electric;

(4) ordering Carbide to assign to Franklin Electric the patent application Carbide filed in its attempt to gain exclusive rights to Franklin Electric's scroll relief concept;

(5) enjoining Carbide from making any further attempts to obtain patent protection for Franklin Electric's scroll relief concept; and

(6) enjoining Carbide from offering to sell or selling any dies incorporating the scroll relief concept or modifying or reconditioning any dies to incorporate the scroll relief concept;

(c) Awarding to Franklin Electric its attorney fees incurred in this action;

(d) Awarding to Franklin Electric all of its recoverable costs incurred in this action; and

(e) Awarding such other and further relief as this Court deems just and equitable.

COUNT VI  
CONVERSION

38. This cause of action is for conversion. Jurisdiction is based on the doctrine of pendent jurisdiction. Venue is proper.

39. Franklin Electric realleges and incorporates herein each of the allegations contained in paragraphs 1-37.

40. Carbide intentionally, wantonly and willfully appropriated and converted the property of Franklin Electric to Carbide's own use or benefit. Such property included, inter alia, Franklin Electric's scroll relief concept and related information, drawings embodying Franklin Electric's scroll relief concept, and a patent application describing and claiming exclusive rights in Franklin Electric's scroll relief concept.

41. Franklin Electric demanded the return of its property and that Carbide cease any further use or exploitation of Franklin Electric's property; however, Carbide has failed to accede to Franklin Electric's demand. A true copy of the demand letter is attached hereto as Attachment 3.

42. Franklin Electric has been damaged by Carbide's conversion of Franklin Electric's property.

WHEREFORE, Franklin Electric prays for a judgment:

(a) Awarding compensatory damages to Franklin Electric in an amount to be determined by the jury but not less than \$5,000,000.00;

(b) Awarding exemplary damages to Franklin Electric in an amount to be determined by the jury but not less than \$10,000,000.00;

(c) Imposing preliminary and permanent injunctive relief:

(1) enjoining Carbide from making any further unauthorized use or disclosure of Franklin Electric's personal property;

(2) compelling Carbide to return to Franklin Electric all documents and things referring or relating in any way to Franklin Electric's scroll relief concept;

(3) ordering Carbide to advise any person or entity to which it has disclosed Franklin Electric's scroll relief concept to advise such person or entity that such is proprietary to Franklin Electric and should not be disclosed to others or used in any manner without the prior written consent of Franklin Electric;

(4) ordering Carbide to assign to Franklin Electric the patent application Carbide filed in its attempt to gain exclusive rights to Franklin Electric's scroll relief concept;

(5) enjoining Carbide from making any further attempts to obtain patent protection for Franklin Electric's scroll relief concept; and

(6) enjoining Carbide from offering to sell or selling any dies incorporating the scroll relief concept or

modifying or reconditioning any dies to incorporate the scroll relief concept;

(d) Awarding to Franklin Electric its attorney fees and costs incurred in this action; and

(e) Awarding such other and further relief as this Court deems just and equitable.

COUNT VII  
COMMON LAW UNFAIR COMPETITION

43. This cause of action is for common law unfair competition. Jurisdiction is based on 28 U.S.C. § 1338(b) and the doctrine of pendent jurisdiction. Venue is proper.

44. Franklin Electric realleges and incorporates herein each of the allegations contained in paragraphs 1-42 above.

45. Carbide intentionally, wantonly and willfully engaged in acts of unfair competition by, inter alia, improperly usurping and using Franklin Electric's scroll relief concept and Franklin Electric's proprietary and confidential information relating thereto; making misrepresentations concerning Carbide's dies and services relating thereto; and improperly attempting to obtain exclusive rights to Franklin Electric's scroll relief concept.

46. Franklin Electric has been damaged and will continue to be damaged by Carbide's acts of unfair competition unless such acts are enjoined by this Court.

WHEREFORE, Franklin Electric prays for a judgment:

(a) Awarding compensatory damages to Franklin Electric in an amount to be determined by the jury but not less than \$5,000,000.00;

(b) Awarding exemplary damages to Franklin Electric in an amount to be determined by the jury but not less than \$10,000,000.00;

(c) Imposing preliminary and permanent injunctive relief:

(1) enjoining Carbide from making any further unauthorized use or disclosure of Franklin Electric's scroll relief concept and any information relating thereto;

(2) compelling Carbide to return to Franklin Electric all documents and things referring or relating in any way to Franklin Electric's scroll relief concept;

(3) ordering Carbide to advise any person or entity to which it has disclosed Franklin Electric's scroll relief concept to advise such person or entity that such is proprietary to Franklin Electric and that it should not be disclosed to others or used in any manner without the prior written consent of Franklin Electric;

(4) ordering Carbide to assign to Franklin Electric the patent application Carbide filed in its attempt to gain exclusive rights to Franklin Electric's scroll relief concept;

(5) enjoining Carbide from making any further attempts to obtain patent protection for Franklin Electric's scroll relief concept; and

(6) enjoining Carbide from offering to sell or selling any dies incorporating the scroll relief concept or modifying or reconditioning any dies to incorporate the scroll relief concept;

(d) Awarding to Franklin Electric its attorney fees and costs incurred in this action; and

(e) Awarding such other and further relief as this Court deems just and equitable.

COUNT VIII  
FALSE MARKING

47. This cause of action is for false marking pursuant to 35 U.S.C. § 292. Jurisdiction is based on 28 U.S.C. § 1331. Venue is proper under 28 U.S.C. § 1391(b).

48. Franklin Electric realleges and incorporates herein each of the allegations contained in paragraphs 1-46 above.

49. For the purpose of deceiving the public, Carbide stated in its advertising literature for its dies and services related thereto that patents for the scroll relief concept were pending at a time when Carbide knew that no patent application was pending or had been applied for by Carbide.

WHEREFORE, Franklin Electric prays for a judgment:

(a) assessing the statutory penalty for false marking against Carbide and awarding Franklin Electric one-half of the penalty so assessed;

(b) awarding Franklin Electric its costs and attorney fees;  
and

(c) awarding Franklin Electric such other and further  
relief as this Court deems just and equitable.

JURY DEMAND

FRANKLIN ELECTRIC REQUESTS A TRIAL BY JURY OF ALL MATTERS  
RAISED IN THIS PLEADING TRIABLE BY JURY.

Attorneys For Plaintiff

Date: August 26, 1991

By: D. J. Brott  
Timothy J. Vezeau  
Donald J. Brott  
Martin J. Hirsch  
MARSHALL, O'TOOLE, GERSTEIN,  
MURRAY & BICKNELL  
Two First National Plaza  
20 S. Clark St., Suite 2100  
Chicago, Illinois 60603  
(312) 346-5750  
(312) 984-9740 (Fax)

Date: August 27, 1991

By: Thomas J. Goeglein  
Thomas J. Galanis  
BECKMAN, LAWSON, SANDLER,  
SNYDER & FEDEROFF  
800 Standard Federal Plaza  
Fort Wayne, Indiana 46802  
(219) 422-0800  
(219) 420-1013 (Fax)

## PURCHASE ORDER

L.H. Carbide

P.O. NO. C 65162

EXPEDITING RECORD

ITEM	DATE	DEL FROM	REMARKS

TO  
L. H. Carbide  
4420 Clubview Drive  
Fort Wayne, IN 46804-4498

SHIP TO INVOICE IN DUPLICATE TO		ORDER DATE	DATE REQUIRED
CODE 01		1-23-90	5-25-90
ACCOUNT NO.		WORK ORDER OR P.A.R. NO.	BUYER
		110002601 E49001	7
<input type="checkbox"/> THIS ORDER IS TAX EXEMPTED SEE NUMBERS BELOW		THE PURCHASE ORDER NO. MUST BE SHOWN ON ALL INVOICES, BILLS OF LADING, SHIPPING CONTAINERS, PACKING SLIPS, AND CORRESPONDENCE. ALL CASH DISCOUNTS ALLOWED ARE TAKEN BASED ON THE DATE FRANKLIN ELECTRIC RECEIVES THE INVOICE OR MATERIAL WHICHEVER IS LATER	
INDIANA TAX EXEMPT. #21071		ARKANSAS TAX EXEMPT. #60 900935	OKLAHOMA TAX EXEMPT. #571135

PLEASE ENTER OUR ORDER. SUBJECT TO THE TERMS AND CONDITIONS OF PURCHASE CONTAINED ON THE FACE AND REVERSE OF THIS ORDER

ITEMS	QUANTITY	U.M.	UNIT PRICE	PART NUMBER	DESCRIPTION	EXTENSION
1	1	Ea	\$65,650.00		Build and carbide details for new Lamination Die # DIL-297682-3	\$65,650.00
2	1	Ea	\$12,525.00		Assemble new 4 Pole 56 Frame carbide Lamination # DIL-297682-3 utilizing components from existing Die # DIL-297682-6 and details from item #1	\$12,525.00 \$78,475.00
Copy of Quote Enclosed - Confirming Order						
Refer Questions To: Dave Fosnaugh						

SHIP/INVOICE CODE	1-COL 2-P 3-P 6-CHG	TERMS	F.O.B.	SHIP VIA	QUANTITY DEVIATION	DEBIT MEMO
					+ - %	82896
1	FRANKLIN ELECTRIC CO., INC. 400 E. SPRING ST. BLUFFTON, IN 46714			PHONE (219) 824-2900	BUYER	
2	FRANKLIN ELECTRIC CO., INC. P.O. BOX 400 U.S. 88 WEST SILOAM SPRINGS, AR 72761			PHONE (501) 524-8331	DIRECT ALL CORRESPONDENCE TO BUYERS ATTENTION. ORDER NOT VALID OVER \$1000 UNLESS SIGNED BELOW.	
3					MANAGER OF PURCHASES	
"COMPLIANCE WITH GOVERNMENT REGULATIONS FOR HAZARDOUS MATERIAL SHIPMENTS IS MANDATORY."						

ITEM	DATE	QTY REC'D	QTY ACCEPTED	QTY REJECTED	REC BY	INSPECTOR	DATE INSPECTED	ITEM	DATE	QTY REC'D	QTY ACCEPTED	QTY REJECTED	REC BY	INSPECTOR	DATE INSPECTED
1	1/14/90	1													

INSTRUCTIONS: Make Tool Record for DIL-297682-3 (2) Details (1) for carbide details to use in mold. (1) for Lam Die DIL-297682-2 to be used in mold.		PRINTS REQUIRED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	DELIVER TO Tool Room	DATE REQUIRED 5-25-90
TOOL REC. REQUIRED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		ORIGINATOR D. Fosnaugh	DATE 1-14-90	
QUOTE/EST. COST 78,475.00		APPROVED BY DEPT MGR. C. Line	DATE 1-11-90	
REQUESTED VENDOR L.H. Carbide		QUOTATION NO. (CAPITAL)		



## EXPEDITING RECORD

DATE	DEL FROM	REMARKS

TO:

L. H. Carbide Tool & Die  
4420 Clubview Drive  
Fort Wayne, IN 46804-4498

P. O. NO. 55555

<input type="checkbox"/> TAX-EXEMPT SEE NUMBERS BELOW	<input type="checkbox"/> TAXABLE BILL APPROPRIATE TAX	ORDER DATE <b>1/23/90</b>	DATE REQUIRED <b>5/25/90</b>
ACCOUNT NO.		WORK ORDER OR P.A.R. NO. <b>110002601 E49-001</b>	BUYER <b>7</b>
THE PURCHASE ORDER NO. MUST BE SHOWN ON ALL IN- VOICES, BILLS OF LADING, SHIPPING CONTAINERS, PACKING SLIPS AND CORRESPONDENCE			
ALL CASH DISCOUNTS ALLOWED ARE TAKEN BASED ON THE DATE FRANKLIN ELECTRIC RECEIVES THE INVOICE OR MATERIAL WHICHEVER IS LATER			
INDIANA TAX EXEMPT. #1796879-001	ARKANSAS TAX EXEMPT. #50062-79-001	OKLAHOMA TAX EXEMPT. #533135	

PLEASE ENTER OUR ORDER, SUBJECT TO THE TERMS AND CONDITIONS OF PURCHASE CONTAINED ON THE FACE AND REVERSE OF THIS ORDER.

ITEMS	QUANTITY	U.M.	UNIT PRICE	PART NUMBER	DESCRIPTION	EXTENSION
<b>CHANGE ORDER - ADD ITEM #3 - CHANGE TOTAL PRICE - FOR ACCT. PURPOSES - 12/11/90.</b>						
1.	1	EA	65,650.00		Build new carbide details for new lamination die #DIL-297682-3	\$ 65,650.00
2.	1	EA	12,825.00		Assemble new 4 Pole 56 Frame carbide lamination die #DIL-297682-3 utilizing components from existing die #DIL-297682-2 and details from Item #1.	\$ 12,825.00
3.	1	EA	23,820.00		Fabricate and install "Scroll Relief" feature in die #DIL-297682-3.	\$ 23,820.00
<b>New Total</b>						<b>\$102,295.00</b>
<i>No Change in Vendor</i>						
1-001 2-001 3-001	TERMS		F.O.B.		SHIP VIA	QUANTITY DEVIATION
	<b>NET 30</b>					<b>82896</b>

SHIP TO / INVOICE IN DUPLICATE TO

400 E. Spring St.  
Ellettsville, IN 46714

Phone 219-824-2900

D. Koehl

BUYER

DIRECT ALL CORRESPONDENCE TO BUYERS ATTENTION.  
ORDER NOT VALID OVER \$1000 UNLESS SIGNED BELOW.

MANAGER OF PURCHASES

\*COMPLIANCE WITH GOVERNMENT REGULATIONS FOR HAZARDOUS MATERIAL  
SHIPMENTS IS MANDATORY.\*

7205 REV 10-90

ITEM	DATE	QTY REC'D	QTY ACCEPTED	QTY REJECTED	REC. BY	INSPECTOR	DATE INSPECTED	ITEM	DATE	QTY REC'D	QTY ACCEPTED	QTY REJECTED	REC. BY	INSPECTOR	DATE INSPECTED
1.	1/22/90				PS										
2.	2/19/90				PS										
3.	12/11/90				D. Foonaugh										
<b>COMPLETE PER D. Foonaugh</b>															

REMARKS:

Make tool record for DIL-297682-3  
issue (2) Debits (1) for Carbide details to  
use in new die (1) for lam die DIL-297682-2 to  
be used in new die.

PRINTS REQUIRED

☐ YES ☒ NO

TOOL REC. REQUIRED

☒ YES ☐ NO

QUOTE/EST COST  
**\$102,295.00**

DELIVER TO

Tool Room

ORIGINATOR

Dave Foonaugh

APPROVED BY DEPT. MGR.

DATE REQUIRED:

5/25/90

DATE

1/19/90

DATE

1/17/90

SUGGESTED VENDOR

L. H. Carbide

QUOTATION NO

CAPITAL

ORIGINATOR

## TERMS AND CONDITIONS OF PURCHASE

**ACCEPTANCE** - THIS PURCHASE ORDER SHALL BECOME A BINDING CONTRACT BETWEEN BUYER AND SELLER ACCORDING TO THE TERMS AND CONDITIONS OF PURCHASE CONTAINED ON THE FACE AND REVERSE SIDE OF THIS ORDER. UPON ACCEPTANCE BY THE SELLER BY EITHER ACKNOWLEDGEMENT HEREOF, OR BY THE BEGINNING OF PERFORMANCE HEREUNDER, ACCEPTANCE BY THE SELLER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS OF PURCHASE CONTAINED ON THE FACE AND REVERSE SIDE OF THIS ORDER, AND BUYER OBJECTS TO, AND IS NOT BOUND BY ANY TERM OR CONDITION OF SELLER DIFFERENT FROM OR IN ADDITION TO THE TERMS AND CONDITIONS OF PURCHASE CONTAINED ON THE FACE AND REVERSE SIDE OF THIS ORDER. THIS PURCHASE ORDER IS THE ENTIRE CONTRACT AND NO CHANGES OR ADDITIONS ARE BINDING ON THE BUYER UNLESS WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE BUYER.

**PACKING AND SHIPPING** - All articles are to be suitably packed and prepared for shipment to secure lowest transportation costs and to meet carrier's requirements. Buyer's order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping labels. Packing list shall accompany each box or package shipment showing Buyer's order number and symbol, item number, and description of articles or materials. Buyer's count and weight shall be final and conclusive on shipments not accompanied by packing lists. Shipping receipts or bills of lading shall be sent to Buyer's Purchasing Department on date articles are shipped. No charges will be allowed for packing, crating or cartage unless stated in the order. Articles not exceeding fifty (50) pounds may be shipped UPS insured but may not exceed 108" in length and girth combined; shipments weighing over fifty (50) pounds are to be shipped as specified on the face of the order.

**INSPECTION** - All articles shall be subject to inspection and test at all practicable times and places, including the period of manufacture, by Buyer and, if this order is placed under a Government contract, by the Government; but such inspections and tests shall be performed so as not to delay unduly the work. If such inspection or test is made on Seller's premises, Seller shall provide without charge reasonable facilities and assistance for the inspectors. All articles are also subject to final inspection and acceptance by Buyer after delivery notwithstanding prior payments or inspections. Buyer may reject any articles which contain defective material or workmanship or otherwise fail to conform to specifications or samples. Rejected material will be held at Seller's risk, subject to Buyer's disposal or may at Buyer's option, be returned at Seller's risk and expense at the full invoice price plus incoming transportation charges if any. No rejected articles shall be resubmitted for acceptance unless Buyer's approval in writing is first obtained.

**ADVANCE MANUFACTURE AND SHIPMENT** - Seller shall not, without Buyer's prior written consent, procure materials and/or manufacture in advance of Seller's normal flow time or deliver in advance of schedule. Buyer may refuse delivery of, or return, shipping charges collect, all articles received in advance of schedule contained on the face of this order.

**WARRANTIES** - The Seller warrants that articles ordered to specifications will conform hereto and to any drawings, samples or other descriptions furnished or adopted by Buyer, and, so far as the purposes are known will be fit and sufficient for the purposes intended, and that all articles will be merchantable, of good quality and free from defects in design, materials and workmanship. This warranty shall run to the Buyer and its Vendee.

**ASSIGNMENTS** - No assignments of this order or of any monies due or to become due hereunder shall be binding upon Buyer without written consent thereto by Buyer.

**CHANGES** - Buyer may at any time, by written notice, make changes within the general scope of this order in (1) drawings, designs or specifications, (2) delivery schedules, or (3) quantities ordered. Should any such change increase or decrease the cost of or the time required for performance of this order, an equitable adjustment may be requested by Seller in the price and/or delivery schedule. No claim by Seller for such adjustment will be valid unless submitted to Buyer within thirty (30) days from date of such change.

**8. DIES, JIGS, TOOLS, PATTERNS AND DATA** - If the price to be paid is stated on the face of this order to include special dies, jigs, tools and patterns used in the manufacture of such articles, then such tools, etc., shall be and become the property of the Buyer. They shall be kept in good condition and from time to time replaced by the Seller without expense to the Buyer, except that the actual cost of changes due to the Buyer's change of design or specifications shall be paid for by the Buyer, if such changes are made prior to the exhaustion of the useful life of the dies, jigs, tools or patterns changed. No dies, tools, patterns or drawings supplied to the Seller by, or otherwise belonging to the Buyer shall be used in the production, manufacture, or design of any articles other than those called for by this order, except with the written consent of the Buyer, nor shall articles furnished to the Buyer's patterns, specifications, drawings or design be furnished, or quoted to any other person or concern. Upon completion or termination of this order such dies, jigs, tools, patterns and drawings belonging to the Buyer shall be disposed of as the Buyer shall direct. Seller agrees that it will keep confidential the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by the Buyer or conceived in the course of performance of this order. Buyer does not grant to Seller any reproduction rights to articles ordered.

**9. PATENT INDEMNITY** - With respect to all items delivered under this order, except items manufactured pursuant to detailed designs developed and furnished by Buyer, Seller shall defend at its own expense and save Buyer, Buyer's agents and customers, and users of Buyer's products harmless, from all claims, loss, damage and liability which may be incurred on account of infringement or alleged infringement of any U.S. patents arising out of the manufacture, sale or use of such articles.

**10. PRICES** - Seller represents that the price or prices specified in this purchase order do not exceed the Seller's current selling price on the same or substantially similar articles, whether to the Government or to any other purchaser, taking into account the quantity under consideration. Seller warrants that prices do not in any case exceed those allowed under current federal price control regulations.

**11. TERMINATION** - The termination clause set forth in Section 8-706 of ASPR, as in effect on the date of this order, is hereby incorporated herein by reference and made a part hereof, except that if no Government contract number appears on the face of this order, the terms "the Government," and the immediately preceding word such as "and," "or," or "by," wherever appearing in said clause are deleted. The provisions of this clause shall not be applicable upon termination for Seller's default, delay longer than when due to causes beyond Seller's control and without Seller's fault or negligence or insolvency, and shall not limit or affect the rights or remedies of Buyer stated in other clauses of this order or provided by law in event of such default, delay or insolvency.

**12. DEFAULT** - Should Seller fail to perform or to comply with any provisions of this order, Buyer may terminate this order in whole or in part and consider any such failure or non-compliance as a breach of this contract, and Buyer expressly retains all its rights and remedies provided by law in the case of such breach.

**13. COMPLIANCE WITH APPLICABLE LAWS** - Seller warrants that in the performance of this order, it has complied with or will comply with all applicable Federal, State, and local laws and ordinances, and all lawful orders, rules and regulations thereunder, including but not by way of limitation, the applicable provisions of the Fair Labor Standards Act of 1938 as amended (29 U.S.C. Sec. 201-219); the Walsh-Healey Public Contracts Act as amended (41 U.S.C. Sec. 35-45); the Work Hours Act of 1962 (40 U.S.C. 327-332); the Anti-Kickback Act (41 U.S.C. Sec. 51-54); the Occupational Safety and Health Act (5 U.S.C. Sec. 6108, 5314, 5315, 7902; 15 U.S.C. Sec. 633, 636; U.S.C. Sec. 1114; 29 U.S.C. Sec. 553, 651-678; 42 U.S.C. Sec. 3142-1; 49 U.S.C. Sec. 1421), the Consumer Product Safety Act (15 U.S.C. Sec. 2051-2081), and all lawful rules and regulations thereunder.

**14. APPLICABLE LAW** - This order is executed by Buyer and Seller with reference to the laws of the State of Indiana, and the rights of all parties and the construction and effect of every provision hereof shall be subject to, and construed according to the laws of the State of Indiana.

**15. SUBCONTRACTING** - Seller will not subcontract, without Buyer's prior written consent, for the design or procurement of any item covered by this order in completed or substantially completed form.

### **Eliminate Stress In Scroll And Slit Stock\***

Stresses in coil stock, scroll or straight slit, often make it difficult to maintain progression in rotor/stator dies; resulting in out-of-roundness and concentricity problems. New L.H. Carbide techniques help to alleviate these problems and improve the quality of your laminations.

### **Programmable Shell Blank Production\***

What could be more troublesome than producing shells, with a seemingly infinite variety of window configurations? Our programmable shell dies will dramatically reduce your repunch expense, tooling and labor, while also eliminating press downtime for set-up changes. L.H. Carbide can show you how.

# **What's New**

**AT L.H. CARBIDE CORPORATION**

### **Closing The Loop On Coil Stock Measurement\***

The production of high-quality interlocked cores requires accurate coil stock measurement. L.H. Carbide's new methods of qualifying completed stacks at extreme accuracy permits us to literally close the loop on our readings of incoming coil stock. You can expect an order of magnitude improvement in stock thickness measurement, with the result being that absolutely no heavy or light cores reach the part collection point. Stop fussing with gages. Stop "tricking" the controls to get what you need. Let L.H. Carbide help you get productive the right way.

### **New Positioning Conveyor Design Permits Secondary Operations\***

L.H. Carbide now makes possible the automatic performance of a number of secondary operations right in line with core production. In addition to precise core measurement, the possibilities include hydraulic core compression and automatic part labeling. Stacks can be identified by: part number, stack height, skew angle, the die number that produced the stack, press line, date produced, or literally any label that your Q.C. or manufacturing people would find useful. Many other operations are also available, just ask.

\*Patents are pending





## **Franklin Electric**

August 12, 1991

Via Registered Mail  
Return Receipt Requested

### DEMAND

Mr. Leon Habegger  
President  
L. H. Carbide Corporation  
4420 Clubview Drive  
Fort Wayne, IN 46804

Dear Mr. Habegger:

Supplementing our recent conference at your offices, Franklin Electric Co., Inc. demands that your company immediately cease and desist from making any use of or further disclosure to others of Franklin Electric's proprietary scroll relief technique. Your continued utilization of our scroll relief technique in the manufacture of or offer to manufacture specially made dies for our competitors is intolerable, has caused us great injury, and will continue to cause us great injury even after such unauthorized utilization is terminated.

We demand that the patent application your company filed in an attempt to obtain exclusive rights to the scroll relief technique be immediately assigned to Franklin Electric and that you agree to cease and desist from any further attempts to patent or otherwise exploit the scroll relief technique.

In order to assure us that all utilization of our scroll relief technique will be immediately discontinued, we demand that your company immediately return to Franklin Electric all documents and things referring or relating in any way to the scroll relief technique, including but not limited to the following:

- 1) all patterns, specifications, drawings, sketches, designs or copies thereof illustrating, incorporating, referring or relating in any way to the scroll relief technique;
- 2) all dies or die components incorporating the scroll relief technique;
- 3) all documentation in any tangible form or copies thereof referring or relating in any way to the scroll relief technique, including electronically encoded data recorded on diskettes or other media; and
- 4) all copies of the patent application filed by your company for the scroll relief technique and all documentation and correspondence relating thereto.

Mr. Leon Habegger  
August 12, 1991  
-2-

Finally, we insist that you advise, in writing, all companies or individuals to whom you have either disclosed the scroll relief technique or sold dies incorporating the scroll relief technique that such technique is proprietary to Franklin Electric and that no utilization of the technique may be made without the prior written consent of Franklin Electric. Please copy us on all such correspondence.

If you do not comply with the above within ten (10) days from the date of this letter, we will have no choice but to seek immediate judicial relief.

Very truly yours,

A handwritten signature in cursive script, reading "Herbert L. Wise".

Herbert L. Wise  
Vice President, Engineering

RECEIVED  
OCT 19 1991  
MARSHALL O'TOOLE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

RECEIVED H.C. #13

MAY 22 1992

GROUP 320

FRANKLIN ELECTRIC CO., INC., )

Plaintiff, )

v. )

L.H. CARBIDE CORPORATION, )

Defendant. )

CIVIL NO. F 91-200

ANSWER

Defendant L.H. Carbide Corporation ("Carbide") answers the complaint of Franklin Electric Co., Inc. ("Franklin Electric") as follows:

THE PARTIES

1. Carbide admits the allegations of Paragraph 1.
2. Carbide admits the allegations of Paragraph 2.

FACTUAL BACKGROUND

3. Carbide admits the allegations of Paragraph 3.
4. Carbide denies that the allegations of Paragraph 4 accurately or completely describe manufacturing conditions addressed by the scroll relief concept. Carbide admits that such problems have existed for years.

5. Carbide denies the allegations of Paragraph 5.

6. Carbide denies that the allegations of Paragraph 6 fairly describe the business in which Carbide is engaged. Carbide designs and manufactures dies for use in stamping laminations for electrical motors. Carbide also designs and manufactures other equipment for the process by which such dies

are utilized by Carbide's customers. Carbide admits that it has done business with Franklin Electric.

7. Carbide denies that scroll relief was conceived by Mr. Fosnaugh. Delno Abnet, an employee and agent of Carbide, conceived and invented scroll relief prior to 1990. Accordingly, Carbide denies that in July, 1990, the concept was disclosed to Mr. Abnet by Mr. Fosnaugh. Carbide admits that Franklin Electric requested Carbide to design and build scroll relief for a die that Franklin Electric had sent to Carbide for reconditioning. Carbide denies the remaining allegations of Paragraph 7.

8. Carbide denies that there was any agreement between Mr. Fosnaugh and Mr. Abnet, either in their individual capacities or as agents of their respective employers, to the effect that Carbide would not disclose the scroll relief to anyone else until such time as Franklin Electric had no further interest in the concept. Carbide denies that Mr. Fosnaugh conceived and disclosed scroll relief to Mr. Abnet and therefore denies that Mr. Fosnaugh relied on any custom in the trade regarding concepts or ideas presented to a supplier. Carbide denies the remaining allegations of Paragraph 8.

9. Carbide denies that it received from Franklin Electric the second page of Attachment 1 purporting to be a "change order" for scroll relief or any other purchase order referring to scroll relief. Accordingly, Carbide denies that Attachment 1 to Franklin Electric's complaint constitutes a written agreement between the parties pertaining to scroll relief. Carbide admits

that it received the first page of Attachment 1, which does not refer to scroll relief, and performed pursuant to its terms. Carbide denies the remaining allegations of Paragraph 9.

10. Carbide admits that it reconditioned Franklin Electric's die. Carbide further admits that it designed, built and incorporated scroll relief in such die. Carbide denies that it did so pursuant to an agreement as alleged and described by Franklin Electric. Carbide is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 10.

11. Carbide admits that it disclosed and/or made available and/or offered the scroll relief concept to other companies and that it did so before and after July, 1990. Carbide admits that such companies include General Electric Co. and Emerson Electric Co. Carbide denies that those companies are significant competitors of Franklin Electric with respect to the electric motors manufactured by Franklin Electric. Carbide further denies that it has breached any agreement with Franklin Electric. Carbide denies all remaining allegations of Paragraph 11.

#### COUNT I

12. Carbide denies that it has violated § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Carbide admits that subject matter jurisdiction exists and that venue is proper.

13. Carbide incorporates and realleges its responses to Paragraphs 1-11.



14-15. Carbide denies the allegations of Paragraphs 14 and 15.

WHEREFORE, Carbide requests that Franklin Electric take nothing by way of its complaint, that the court enter judgment in favor of Carbide and against Franklin Electric, and that Carbide be awarded costs and all other appropriate relief.

COUNT II

16. Carbide denies that it has breached any contract with Franklin Electric. Carbide admits that subject matter jurisdiction exists and that venue is proper.

17. Carbide incorporates and realleges its responses to Paragraphs 1-15.

18. Carbide admits that Franklin Electric has paid for the reconditioning of its die and the design and incorporation of scroll relief in such die. Carbide denies the existence of an agreement as alleged and described elsewhere in Franklin Electric's complaint.

19-20. Carbide denies the allegations of Paragraphs 19 and 20.

WHEREFORE, Carbide requests that Franklin Electric take nothing by way of its complaint, that the court enter judgment in favor of Carbide and against Franklin Electric, and that Carbide be awarded costs and all other appropriate relief.

### COUNT III

21. Carbide denies that it has violated Ind. Code §§ 24-2-3-1 et seq. Carbide admits that subject matter jurisdiction exists and that venue is proper.

22. Carbide incorporates and realleges its responses to Paragraphs 1-20.

23-29. Carbide denies the allegations of Paragraphs 23, 24, 25, 26, 27, 28 and 29.

WHEREFORE, Carbide requests that Franklin Electric take nothing by way of its complaint, that the court enter judgment in favor of Carbide and against Franklin Electric, and that Carbide be awarded costs and all other appropriate relief.

### COUNT IV

30. Carbide denies that it has been unjustly enriched. Carbide admits that subject matter jurisdiction exists and that venue is proper.

31. Carbide incorporates and realleges its responses to Paragraphs 1-29.

32-33. Carbide denies the allegations of Paragraphs 32 and 33.

WHEREFORE, Carbide requests that Franklin Electric take nothing by way of its complaint, that the court enter judgment in favor of Carbide and against Franklin Electric, and that Carbide be awarded costs and all other appropriate relief.

COUNT V

34. Carbide denies that it has violated the provisions of Ind. Code §§ 34-4-30-1 et seq. Carbide admits that subject matter jurisdiction exists and that venue is proper.

35. Carbide incorporates and realleges its responses to Paragraphs 1-33.

36-37. Carbide denies the allegations of Paragraphs 36 and 37.

WHEREFORE, Carbide requests that Franklin Electric take nothing by way of its complaint, that the court enter judgment in favor of Carbide and against Franklin Electric, and that Carbide be awarded costs and all other appropriate relief.

COUNT VI

38. Carbide denies that it has converted any property of Franklin Electric. Carbide admits that subject matter jurisdiction exists and that venue is proper.

39. Carbide incorporates and realleges its responses to Paragraphs 1-37.

40. Carbide denies the allegations of Paragraph 40.

41. Carbide admits that it received from Franklin Electric the letter attached to Franklin Electric's complaint as Attachment 3. However, Carbide denies that Franklin Electric has any property interest in or rights to scroll relief and denies that it has any obligation to accede to the demands of Franklin Electric.

42. Carbide denies the allegations of Paragraph 42.

WHEREFORE, Carbide requests that Franklin Electric take nothing by way of its complaint, that the court enter judgment in favor of Carbide and against Franklin Electric, and that Carbide be awarded costs and all other appropriate relief.

COUNT VII

43. Carbide denies that it has committed any acts constituting common law unfair competition. Carbide admits that subject matter jurisdiction exists and that venue is proper.

44. Carbide incorporates and realleges its responses to Paragraphs 1-42.

45-46. Carbide denies the allegations of Paragraphs 45 and 46.

WHEREFORE, Carbide requests that Franklin Electric take nothing by way of its complaint, that the court enter judgment in favor of Carbide and against Franklin Electric, and that Carbide be awarded costs and all other appropriate relief.

COUNT VIII

47. Carbide denies that it has violated the provisions of 35 U.S.C. § 292. Carbide admits that subject matter jurisdiction exists and that venue is proper.

48. Carbide incorporates and realleges its responses to Paragraphs 1-46.

49. Carbide denies the allegations of Paragraph 49.

WHEREFORE, Carbide requests that Franklin Electric take nothing by way of its complaint, that the court enter judgment in favor of Carbide and against Franklin Electric, and that Carbide be awarded costs and all other appropriate relief.

#### AFFIRMATIVE DEFENSES

1. By the actions and/or inactions of David Fosnaugh and Franklin Electric with regard to any purported rights to the scroll relief concept, Franklin Electric has waived any such rights.

2. Franklin Electric is estopped to assert any purported rights to the scroll relief concept by the actions and/or inactions of David Fosnaugh and Franklin Electric.

#### COUNTERCLAIM

1. This cause of action is brought pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Jurisdiction is founded upon 28 U.S.C. § 1331. Venue is proper pursuant to 28 U.S.C. § 1391(b).

2. Carbide is an Indiana corporation doing business in Indiana and having a place of business at 4420 Clubview Drive, Fort Wayne, Indiana.

3. Franklin Electric is an Indiana Corporation doing business in Indiana had having a place of business at 400 East Spring Street, Bluffton, Indiana.

4. Prior to 1990, Delno Abnet, an employee of Carbide, invented the scroll relief concept. Carbide has since filed a

patent application in connection with said concept in the United States Patent and Trademark Office.

5. As the inventor of the scroll relief concept, Carbide owns said concept and is entitled to all rights thereto.

6. An actual controversy has arisen because Franklin Electric claims that David Fosnaugh, one of its employees, invented the scroll relief concept in 1990. Consequently, Franklin Electric is claiming rights to the scroll relief concept that are inconsistent with those of Carbide.

7. Upon information and belief, Franklin Electric has filed a patent application in the United States Patent and Trademark Office in connection with the scroll relief concept that seeks to establish rights in said concept that are inconsistent with Carbide's patent rights.

WHEREFORE, Carbide requests a judgment:

(a) declaring that:

(1) Carbide is the inventor of the scroll relief concept; and

(2) as between Carbide and Franklin Electric, Carbide is the owner of the scroll relief concept and is entitled to all rights thereto;


(b) assigning any patent applications made by Franklin Electric related to the scroll relief concept to Carbide; and

(c) Imposing preliminary and permanent injunctive relief enjoining Franklin Electric from making any claims of ownership as to the scroll relief concept; and

(d) awarding such other and further relief as is appropriate.

Respectfully submitted,

BAKER & DANIELS

  
\_\_\_\_\_  
James H. Ham, III  
Douglas Dormire Powers  
Anthony Niewyk  
2400 Fort Wayne National  
Bank Building  
P.O. Box 12709  
Fort Wayne, Indiana 46864  
(219) 424-8000

**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that he sent a copy of the foregoing Answer on October 7, 1991 by first class United States mail, postage prepaid, upon Timothy J. Vezeau, Donald J. Brott and Martin J. Hirsch, MARSHALL, O'TOOLE, GERSTEIN, MURRAY & BICKNELL, Two First National Plaza, 20 South Clark Street, Suite 2100, Chicago, Illinois 60603 and Arthur G. Surguine, Jr., and Scott L. Bunnell, HUNT, SUEDHOFF, BORROR & EILBACHER, 9th Floor Paine Webber Building, Fort Wayne, Indiana 46802.

  
\_\_\_\_\_

# United States District Court

NORTHERN

DISTRICT OF

INDIANA

FORT WAYNE DIVISION

FRANKLIN ELECTRIC CO., INC.,

SUMMONS IN A CIVIL ACTION

v. Plaintiff,

CASE NUMBER: **F 91-00200**

L. H. CARBIDE CORPORATION,

Defendant.

TO: (Name and Address of Defendant) L. H. Carbide Corporation  
4420 Clubview Drive  
Fort Wayne, IN 46804  
Attn: Leon O. Habegger, Resident Agent

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Thomas J. Goeglein  
Thomas J. Galanis  
Beckman, Lawson, Sandler, Snyder & Federoff  
800 Standard Federal Plaza  
P.O. Box 800  
Fort Wayne, IN 46801-0800  
Phone: (219) 422-0800

Timothy J. Vezeau  
Marshall, O'Toole, Gerstein,  
Murray & Bicknell  
Two First National Plaza  
20 S. Clark St., Suite 2100  
Chicago, IL 60603  
Phone: (312) 346-5750

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

*Richard E. Timmons*

CLERK

*Lana R. Melton*

BY DEPUTY CLERK

DATE August 27, 1991



## RETURN OF SERVICE

Service of the Summons and Complaint was made by me <sup>1</sup>	DATE August 27, 1991
NAME OF SERVER Thomas J. Goeglein	TITLE Attorney at Law
Check one box below to indicate appropriate method of service	

- ☐ Served personally upon the defendant. Place where served: \_\_\_\_\_
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  
Name of person with whom the summons and complaint were left: \_\_\_\_\_
- ☐ Returned unexecuted: \_\_\_\_\_
- ☒ Other (specify): certified mail, return receipt requested

## STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
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## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on August, 1991  
Date

Signature of Server Thomas J. Goeglein  
800 Standard Federal Plaza  
P.O. Box 800  
Fort Wayne, IN 46801-0800  
Address of Server

<sup>1</sup>) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I (a) PLAINTIFFS

FRANKLIN ELECTRIC CO., INC.  
400 E. Spring Street  
Bluffton, IN 46714

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Wells  
(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

L. H. CARBIDE CORPORATION  
4420 Clubview Drive  
Fort Wayne, IN 46804

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Allen  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Thomas J. Goeglein  
ckman, Lawson, Sandler,  
yder & Federoff  
3 Standard Federal Plaza  
rt Wayne, IN 46801-0800  
19) 422-0800

Timothy J. Vezeau  
Marshall, O'Toole,  
Gerstein, Murray &  
Bicknell  
20 S. Clark, Ste. 2100  
Chicago, IL 60603; (312) 346-5750

## ATTORNEYS (IF KNOWN)

## II. BASIS OF JURISDICTION

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                                 | DEF                                 |   | PTF                      | DEF                      |
|---|-------------------------------------|-------------------------------------|---|--------------------------|--------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> | <input type="checkbox"/> |
| Citizen of Another State                | <input type="checkbox"/>            | <input type="checkbox"/>            | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> | <input type="checkbox"/> |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/>            | <input type="checkbox"/>            | Foreign Nation  | <input type="checkbox"/> | <input type="checkbox"/> |

## IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

35 USC § 292 and 15 USC § 1125(a)

Complaint to recover damages as a result of false representations and false markings.

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 362 Personal Injury- Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Food & Drug <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal <input type="checkbox"/> 28 USC 158 <input type="checkbox"/> 423 Withdrawal <input type="checkbox"/> 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC (405(g)) <input type="checkbox"/> 863 DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes <input type="checkbox"/> 871 IRS-Third Party <input type="checkbox"/> 26 USC 7609 <input type="checkbox"/> 875 Customer Challenge <input type="checkbox"/> 12 USC 3410	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commercial Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions

## VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- Transferred from
- ☐ 5 another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Judge from Magistrate Judgment
- Appeal to District

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

## DEMAND \$

\$15 Million

Check YES only if demanded in complaint:  
JURY DEMAND: ☒ YES ☐ NO

## VIII. RELATED CASE(S) (See instructions): IF ANY

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE  
August 27, 1991

SIGNATURE OF ATTORNEY OF RECORD

Thomas J. Goeglein

UNITED STATES DISTRICT COURT

## Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs - Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a Government Agency, using only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved).

(c) Attorneys. Enter firm name, address, telephone number, and attorney of record. If there are several attorneys list them on the reverse side, noting in this section "(see reverse)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8 (a), F.R.C.P. which requires that jurisdiction be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction is based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an X in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331 where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, and act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence and box 1 or 2 should be marked.

Diversity of citizenship. (4) (JS-44A, or C only) This refers to suits under 28 U.S.C. 1332 where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below). (Federal question actions take precedence over diversity cases.)

Local Question. (5) (JS-44B only) Check this box for proceedings under local civil law.

**III. Residence (citizenship) of Principal Parties (JS-44A and C only) or Remarks. (JS-44B only)** This section of the JS-44A or JS-44C is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party. This section of form JS-44B may be used for remarks.

**IV. Cause of Action.** Report the civil statute under which you are filing and give a brief description of the cause.

**V. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action description, in Section 5 above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**VI. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court (3) Check this box for cases remanded to the district court for further action. Use the date of remand and the filing date.

Reinstated or Reopened. (4) Check this box for cases reopened or reinstated in the district court. Use the reopening date as the filing date.

Transferred from Another district. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision.

**VII. Requested in Complaint: Class Action.** Place an "X" in this box if you are filing a class action under Rule 23 F.R.Cv.P.

**Demand.** In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

**Jury Demand.** Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Remarks (JS-44A only) or Related Cases. (JS-44C only).** This section of form JS-44A may be used for remarks. This section of the JS-44C is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.